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FILED  
MAY 21 2008  
FBI**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**Name LITMON, JR. DAVID  
(Last) (First) (Initial)Prisoner Number CO-000555-3

COALINGA STATE HOSPITAL

Institutional Address P.O. BOX 5003  
COALINGA, CA 93210**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**DAVID LITMON, JR.

(Enter the full name of plaintiff in this action.)

vs.

NORM KRAMER, DIRECTION OFCOALINGA STATE HOSPITAL

(Enter the full name of respondent(s) or jailor in this action.)

Case No. 08 2569

(To be provided by the clerk of court)

**PETITION FOR A WRIT  
OF HABEAS CORPUS****(PR)**Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose  
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda

13 County Superior Court, Oakland):

14 SANTA CLARA COUNTY SUPERIOR COURT, SAN JOSE, CA

15 Court

Location

16 (b) Case number, if known 210430

17 (c) Date and terms of sentence two-year civil commitment

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
 19 parole or probation, etc.) Yes xx No       

20 Where?

21 Name of Institution: COALINGA STATE HOSPITAL

22 Address: P.O. BOX 5003, COALINGA, CA

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 I was not sentenced for a crime, this is a civil commitment  
 27 under California's Sexually Violent Predator Act

28 Welfare and Institutions Code 6604

3. Did you have any of the following?

Arraignment: / Probable Cause Yes xx No     

Preliminary Hearing: Yes xx No     

Motion to Suppress: Yes      No xx

4. How did you plead?

Guilty      Not Guilty xx Nolo Contendere     

Any other plea (specify) Denied true of petition

5. If you went to trial, what kind of trial did you have?

Jury xx Judge alone      Judge alone on a transcript     

6. Did you testify at your trial? Yes xx No     

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes xx No     

(b) Preliminary hearing Yes      No xx

(c) Time of plea Yes xx No     

(d) Trial Yes      No xx

(e) Sentencing Yes      No xx

(f) Appeal Yes xx No     

(g) Other post-conviction proceeding Yes      No xx

8. Did you appeal your conviction? Yes xx No     

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes xx No     

Year: 2007 Result: AFFIRMED

Supreme Court of California Yes xx No     

Year: 2007 Result: DENIED REVIEW

Any other court Yes      No xx

Year:      Result:     

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes xx No     

(c) Was there an opinion? Yes xx No     

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
Yes      No xx

If you did, give the name of the court and the result:

\_\_\_\_\_  
\_\_\_\_\_

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes      No xx

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: \_\_\_\_\_

Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

II. Name of Court: \_\_\_\_\_

Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

1 a. \_\_\_\_\_  
 2 b. \_\_\_\_\_  
 3 c. \_\_\_\_\_  
 4 d. \_\_\_\_\_  
 5 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

6 III. Name of Court: \_\_\_\_\_  
 7 Type of Proceeding: \_\_\_\_\_  
 8 Grounds raised (Be brief but specific):  
 9 a. \_\_\_\_\_  
 10 b. \_\_\_\_\_  
 11 c. \_\_\_\_\_  
 12 d. \_\_\_\_\_  
 13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_  
 15 Type of Proceeding: \_\_\_\_\_  
 16 Grounds raised (Be brief but specific):  
 17 a. \_\_\_\_\_  
 18 b. \_\_\_\_\_  
 19 c. \_\_\_\_\_  
 20 d. \_\_\_\_\_  
 21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?  
 23 Yes xx No \_\_\_\_\_  
 24 Name and location of court: COURT OF APPEAL, SIXTH APPELLATE

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
 27 support each claim. For example, what legal right or privilege were you denied? What happened?  
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

GROUND ONE: PETITIONER'S CIVIL COMMITMENT AFTER THE APPLICABLE COMMITMENT TERM EXPIRED VIOLATED HIS DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

GROUND TWO: PETITIONER'S INDEFINITE PRETRIAL DETENTION PRIOR TO HIS CIVIL COMMITMENT VIOLATED HIS EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

SUPPORTING FACTS:

1. On May 2, 2000, Petitioner, David Litmon, Jr., was initially committed under California's Sexually Violent Predator Act. (SVPA) (Welfare and Institutions Code Section 6600 et seq.) (WIC § 6600 et seq.)
2. On April 23, 2002, the Santa Clara County District Attorney filed a Petition (2002 petition) to recommitment Petitioner as a SVP, from May 2, 2002 to May 2, 2004.
3. On July 19, 2002, the trial court found probable cause that Petitioner was a SVP, and a jury trial was ordered for November 12, 2002.
4. On October 30, 2002, Petitioner was granted leave to represent himself, and the November 12, 2002, trial date was vacated. The case was then continued until January 10, 2003, for trial setting.
5. On January 10, 2003, Petitioner filed a motion to reconsider the July 19, 2002, probable cause finding based on **Cooley v. Superior Court, (2002) 29 Cal.4th 228**. The trial court then continued the case pending a ruling on Petitioner's reconsideration motion.
6. On March 28, 2003, the trial court granted Petitioner's motion to reconsider the July 19, 2002, probable cause finding, and ordered a new probable cause hearing for October 2003.
7. On November 7, 2003, the trial court again found probable cause and ordered over Petitioner's objection a jury trial for August 2, 2004.

8. On November 23, 2003, Petitioner filed a motion for a trial in 60 days, which the prosecution opposed, and the court denied. However, the trial court asked Petitioner when would he be ready for trial, and he indicated on February 23, 2004. The trial court then ordered the case back to the Master Trial Court (MTC) for trial on February 23, 2004.

9. On February 23, 2004, Petitioner appeared in the MTC and declared he was ready for trial. The MTC placed the case on "standby".

10. Also, on February 23, 2004, the prosecution filed a second petition to recommit (2004 petition) Petitioner while the 2002 petition was still pending.

11. On March 8, 2004, the prosecution filed a motion to consolidate both the 2002 petition with the 2004 petition for a single trial.

12. On March 9, 2004, Petitioner filed a motion demanding a immediate trial before the 2002 petition expired. The MTC refused to conduct a hearing on Petitioner's demand motion, and continued the 2002 petition on the standby calendar.

13. On April 2, 2004, the trial court in which the 2004 petition was pending, granted the prosecution's motion to consolidate the both the 2002 petition and the 2004 petition for a single trial over Petitioner's objection. The court then ordered a trial date of June 1, 2004, 28 days after the 2002 petition expired.

14. On April 23, 2004, Petitioner filed a petition for writ of mandate in the California Court of Appeals, Sixth Appellate District, challenging the trial court's consolidation order.

15. On May 17, 2004, Petitioner filed a motion in the trial court to dismiss the SVPA proceedings on the ground that his procedural due process rights were violated by his current pretrial detention without a trial.

16. On May 19, 2004, the Court of Appeal, (COA) ordered all proceedings in the trial court stayed pending review of the consolidation order.

17. On November 4, 2004, the COA granted Petitioner's writ of mandate, and directed the trial court to vacate its consolidation order and to set the 2002 petition for trial forthwith. (**Litmon v. Superior Court**, (2004) 123 Cal.App. 4th 1156)

18. On March 8, 2005, Petitioner was returned back to the County from Atascadero State Hospital, and the 2002 petition was assigned by the MTC to the same court that issued the consolidation order.

19. On April 1, 2005, Petitioner filed a peremptory challenge to the trial court under CCP § 170.6. The trial court denied the challenge and Petitioner sought relief in the COA.

20. On June 29, 2005, the COA granted Petitioner's challenge under CCP § 170.6, and directed the trial court to enter a new order granting the challenge.

21. In July 2005, after being assigned to a different trial court on the 2002 petition, Petitioner filed a motion to dismiss the petition on due process and equal protection grounds.

22. The trial court denied Petitioner's motion to dismiss, on July 29, 2005, and ordered a trial on the 2002 petition for August 29, 2005, 15 months after the 2002 petition had expired.

23. Petitioner sought relief in the COA, which it denied, and then Petitioner sought relief in the California Supreme Court. The Supreme Court denied review on October 12, 2005.

24. On August 29, 2005, Petitioner proceeding to trial on the 2002 petition, and on September 7, 2005, a jury found the petition true.



25. On September 7, 2005, the trial court ordered Petitioner committed as a SVP from May 2, 2002 to May 2, 2004.

26. On September 14, 2005, Petitioner filed a notice of appeal, and in July 2007 to COA affirmed the commitment, and on August 26, 2007, the California Supreme Court denied review.

27. Petitioner has now exhausted all state remedies, and now seeks relief in the United States District Court in the herein Petition for Writ of Habeas Corpus.

### ARGUMENT

#### PETITIONER'S CIVIL COMMITMENT AFTER THE APPLICABLE COMMITMENT TERM EXPIRED VIOLATED HIS DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The United States Supreme Court has made it clear that involuntary civil commitments to mental institutions are subject to due process protection under the U.S. Constitution's Fourteenth Amendment. (*Vitek v. Jones*, (1980) 445 U.S. 480; *Zinermon v. Burch*, (1990) 494 U.S. 113) In addition, the due process clause of the fourteenth amendment, requires a trial at a "meaningful time". (*Mathews v. Eldridge*, (1976) 424 U.S. 319)

Under California's Sexually Violent Predator Act, (SVPA) there are no specific time limits when either a initial or recommitment trial must be conducted. Although, in *Litmon v. Superior Court*, 123 Cal.App. 4th 1156, the court stated that "(t)he main procedural mechanism through which the Legislature's intent [in relation to the SVPA] is realized is the provision of a trial every two years to ascertain the committed person's current mental condition." (*Litmon v. Superior Court*, 123 Cal.App.4th at 1169)

In 1997, the U.S. Supreme Court, held that the civil commitment of a person coming to the end of a prison term was constitutional. The Supreme Court, stated; "(w)e have consistently upheld such involuntary commitment statutes provided the confinement takes place pursuant to proper procedures and evidentiary standards." *Kansas v. Hendricks*, 117 S.Ct. at 2080

Petitioner's civil commitment as a SVP 15 months after the applicable commitment term expired no longer bears a reasonable relation to the purpose for which Petitioner was committed, which was for custody and treatment. *Jackson v. Indiana*, 406 U.S. 715 (1972); *McNeil v. Director, Patuxent Institution* 407 U.S. 245 (1972) Petitioner was to be committed under the 2002 petition from May 2, 2002 to May 2, 2004, when that time period expired Petitioner should have been released.

PETITIONER'S INDEFINITE PRETRIAL DETENTION  
PRIOR TO HIS CIVIL COMMITMENT VIOLATED  
HIS EQUAL PROTECTION RIGHTS UNDER THE  
FOURTEENTH AMENDMENT TO THE UNITED STATES  
CONSTITUTION

The concept of equal protection under the law compels recognition that person similarly situated for purposes of the law, receive equal treatment. (*Baxstrom v. Herold*, 383 U.S. 107 (1966))

California's SVPA is a civil commitment scheme intended to secure treatment for persons suffering from mental disorders that make them dangerous. (WIC § 6604)

To make a claim under the equal protection clause of the fourteenth amendment, Petitioner must demonstrate that the State has adopted a classification that affects two or more similarly situated groups in an unequal manner.

Petitioner contends that of the seven civil commitment schemes in California, only one allows an individual to be held without a trial for years or without any procedural limitations when a trial must be conducted and that is the SVPA.

For example, under Penal Code Section 1026, Penal Code Section 2962, Welfare and Institutions Code Sections, 1800, 5300, 6300, and 6500, each requires a trial after a petition is filed within 30 days of the filing of the petition.

Petitioner was held on the 2002 petition for a total of 39 months before the trial commenced, and when Petitioner's filed his motion to dismiss the 2002 petition, it was denied.

Petitioner under the U.S. Constitution's Fourteenth Amendment's Equal Protection Clause, should have been treated no different than any other person which California seeks to civilly commit.

#### **RELIEF REQUESTED**

1. Petitioner requests a Declaratory Judgment that his rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution were violated when he was committed 15 months after the applicable commitment term.

2. Petitioner's requests the reversal of his 2005 commitment under the 2002 petition on due process grounds.

3. Petitioner requests a Declaratory Judgment that his equal protection rights were violated under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

4. Petitioner requests the reversal of his 2005 commitment under the 2002 petition on equal protection grounds.

1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 Mathews v. Eldridge, (1976) 424 U.S. 319; Vitek v. Jones,  
5 (1980) 445 U.S. 480; Zinermon v. Burch, 494 U.S. 113 (1990)  
6 McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1992)

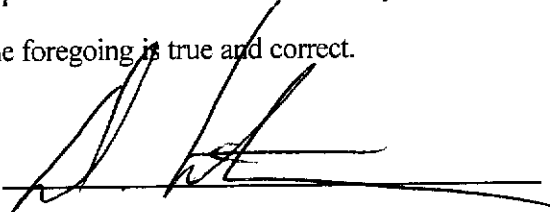
7 Do you have an attorney for this petition? Yes \_\_\_\_\_ No xx

8 If you do, give the name and address of your attorney:

9 \_\_\_\_\_  
10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on May 14, 2008

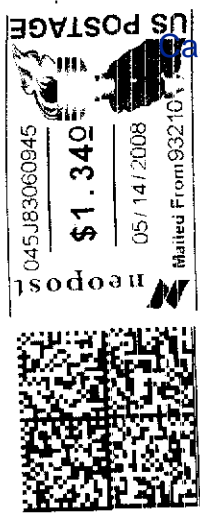
14 Date

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Signature of Petitioner

(Rev. 6/02)

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Linda, CA 93210

United States District Court  
Northern District of California  
280 S. First Street, #2112  
San Jose, CA 95113-3208



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